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AUG 0 4 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

'08 MJ 8690

UNITED STATES OF AMERICA Plaintiff, v. Marcelo LOPEZ-Mendez (1) David Leonardo HERRERA (2) Defendants.	Magistrate Case No.: COMPLAINT FOR VIOLATION OF 21 U.S.C. § 952 and 960 Importation of a Controlled Substance (Felony)

The undersigned complainant being duly sworn states:

That on or about August 3, 2008, within the Southern District of California, defendants Marcelo LOPEZ-Mendez and David Leonard HERRERA, did knowingly and intentionally import approximately 58.56 kilograms (128.83 pounds) of marijuana, a Schedule I Controlled Substance, into the United States from a place outside thereof, in violation of Title 21, United States Code, Section 952 and 960.

The complainant states that this complaint is based on the attached Statement of Facts incorporated herein by reference.

Vincent McDonald Special Agent
U.S. Immigration & Customs Enforcement

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 4th DAY OF August 2008.

Pete C. Lewis
UNITED STATES MAGISTRATE JUDGE

UNITED STATES OF AMERICA
v.
Marcelo LOPEZ-Mendez (1)
David Leonardo HERRERA (2)

STATEMENT OF FACTS

This complaint is based on the reports, documents, and notes furnished to U. S. Immigration and Customs Enforcement Special Agent Vincent McDonald.

On August 3, 2008, at approximately 1430 hours, Marcelo LOPEZ-Mendez, entered the U. S. from the Republic of Mexico via the Calexico, CA West Port of Entry. LOPEZ was driving a 1993 GMC pick-up truck and was accompanied by David Leonardo HERRERA.

Customs & Border Protection Officer (CBPO) T. Negron was conducting primary inspections and encountered LOPEZ and HERRERA. CBPO T. Negron referred both occupants and the vehicle to vehicle secondary (VS) for further examination.

CBPO J. Jones was conducting a parking lot sweep of the VS with his Narcotics Human Detection Dog. The canine alerted to the tires of the vehicle. CBPO J. Jones then informed CBPO R. Mendibles of the alert by his canine.

CBPO R. Mendibles obtained a negative Customs declaration from LOPEZ. LOPEZ stated he owned the vehicle and was destined to Calexico where he resided. HERRERA also claimed to reside in Calexico. CBPO R. Mendibles continued to inspect the vehicle and utilized a mechanical device to inspect the tires. CBPO R. Mendibles stated the device displayed an abnormal reading. CBPO R. Mendibles removed a tire and stated the tire felt heavy. All four tires were removed and cut open revealing a total of 38 packages with a total weight of 58.56 kilograms (128.83 pounds). A package was probed and it field-tested positive for marijuana, a Schedule I Controlled Substance.

LOPEZ was placed under arrest and advised of his constitutional rights pursuant Miranda. LOPEZ acknowledged those rights and waived them agreeing to answer questions without the presence of an attorney. LOPEZ claimed he did not know marijuana was inside the vehicle and he thinks HERRERA "set him up." LOPEZ stated the car he was driving does not belong to him. LOPEZ thought the vehicle was HERRERA's and HERRERA contacted him by telephone and asked him to assist him driving the car across the border. LOPEZ stated he drove an "astro van" from "AA" parking to a "U-haul" on Cole road earlier in the day for HERRERA and this was the second car he was driving for HERRERA. LOPEZ added he had spoken to HERRERA on the telephone earlier in the day to set up the operation. LOPEZ claimed he and HERRERA took a taxi to Mexico to retrieve the GMC before crossing the vehicle into the U.S.

HERRERA was placed under arrest and advised of his constitutional rights pursuant Miranda. HERRERA acknowledged those rights and waived them agreeing to answer questions without the presence of an attorney. HERRERA claimed he did not know marijuana was inside the vehicle. HERRERA claimed he never knew who LOPEZ was and he just asked him for a cigarette and a ride across the border while walking on the street in Mexico. HERRERA then changed his story and claimed he was just standing on the street in Mexico and met up with LOPEZ. While on the street a friend of LOPEZ approached HERRERA and asked him to accompany LOPEZ across the border. HERRERA claimed he has never spoke to LOPEZ on the telephone.